IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Civil Application No. 2955 of 2007

Promod K. Dharmale & Ano. Vs. Asudmal Laxmandas Sindhi &Ors.

Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders

Court's or Judge's orders

Shri L. Mohta Adv. for applicant.

CORAM: C. L. PANGARKAR J.
Dated: 11th December, 2007.

Heard Shri Mohta learned counsel for the applicant. None appears for the non applicant though duly served. This application for condonation of

delay has been filed to condone the delay in filing application for setting aside ex-parte judgment and decree passed in Second Appeal No. 299/90. It is contended by the applicants that they had engaged Shri Bhutada Advocate and they were all the while under the impression that Shri Bhattad would appear and contest the appeal. However, it appears that Shri Bhattad never appeared in the appeal and the decree came to be passed. Shri Mohta submits that the decision was already in favour of the respondents and they have a very good case in appeal. He submits that the property involved in the

dispute is the only property available for the respondent for their livelihood and substantial questions of law are also involved in the appeal. The fact that the appeal has been admitted clearly indicates that substantial questions of law are involved in the appeal. In view of the fact that substantial questions of law are involved in the appeal and the fact that respondents were under the impression that counsel would appear and contest the appeal and therefore they did not bother to verify whether the Advocate appeared or not, could be a probable reason. It appears that the respondents came to know

about the decision of the appeal only when they received notice of the execution and thereafter this application has been filed. In view of this I find that the delay in filing application for setting aside ex-parte decree needs to be condoned. Delay stands condoned.

Issue notice to the respondents on the Misc. Application returnable 6 weeks.

JUDGE

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